

Le (Migration) [2021] AATA 1504 (21 May 2021)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Tuan Dung Le
CASE NUMBER:	1800901
DIBP REFERENCE(S):	CLF2017/22793
MEMBER:	Deputy President J.L Redfern PSM
DATE:	21 May 2021
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal remits the application for a Partner (Residence) (Class BS) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 801 (Partner) visa: • cls.801.221(2)(c) and (d) of Schedule 2 to the Regulations.

Statement made on 21 May 2021 at 2:15 PM

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

CATCHWORDS

MIGRATION – Partner (Residence)(Class BS) – Subclass 801 (spouse) – whether the applicant and sponsor are in a genuine and continuing relationship – consideration of financial and social aspects of relationship – consideration of nature of commitment to one another and the nature of the household – applicant and sponsor found to be in a genuine spousal relationship – decision under review remitted with direction.

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 29, 31, 65, 376

Migration Regulations 1994 (Cth), r. 1.15A, Schedule 2, cls.801.22, 801.221

CASES

He v Minister for Immigration and Border Protection [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 13 December 2017 to refuse to grant the applicant a Partner (Residence) (Class BS) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, Mr Tuan Dung Le, applied for the visa on 28 June 2013 on the basis of his relationship with his sponsor, Ms Thi Kim Van Nguyen. He was granted a subclass 820 visa on 2 July 2013. At that time, Class BS contained only one subclass: Subclass 801 (Partner). The criteria for the grant of this visa are set out in Part 801 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. On 13 December 2017, the delegate refused to grant the visa on the basis that Mr Le did not satisfy cl.801.221(2)(c) of the Regulations because she was not satisfied that he was in a genuine and continuing relationship with Ms Nguyen and was therefore not satisfied that Mr Le was the spouse or de facto partner of Ms Nguyen as defined under the Act.
4. By letter dated 4 March 2021, the Tribunal requested certain information be provided. Mr Le, through his appointed representative, provided information on 1 April 2021, which included further third-party witnesses' statements in support of his claims and updated financial documents, including bank statements. On 8 April 2021, the Tribunal released to the applicant a copy of a s.376 non-disclosure certificate and the confidential information referred to in the certificate, relating to Ms Nguyen's details with Centrelink.
5. Mr Le appeared before me on 28 April 2021 to give evidence and present arguments. Ms Nguyen, her daughters Sandra and Nhan Le and Mr Le's friend Mr Phu Tho Pham also gave oral evidence. Mr Le's representative attended the hearing and the hearing was conducted with the assistance of an interpreter in the Vietnamese and English languages. After the hearing Mr Le's representative provided further submissions, together with Mr Le's tax returns and notices of assessment from the Australian Taxation Office (ATO), a letter from Centrelink in relation to Ms Nguyen's benefits, copies of Mr Le's bank statements highlighting cash withdrawals made by him and alleged to have been provided to Ms Nguyen and extracts of Yahoo chat texts between Mr Le and Ms Nguyen. Mr Le, his representative, the interpreter and all witnesses attended the hearing in person from a hearing room in Melbourne. I attended the hearing from Sydney and Microsoft Teams technology was used, similar to videoconferencing with a large oversized screen. The advantage of this technology was that the connection was excellent and clear, and the screen could be used to present documents to witnesses to assist in the questioning process.
6. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

LEGISLATIVE FRAMEWORK

7. Section 29 of the Act provides that the Minister may grant a non-citizen permission, known as a visa, to travel to and enter Australia, or remain in Australia, or both. Section 31(1) of the Act provides that there are to be prescribed classes of visas and subs (3) provides that the Regulations may prescribe the criteria for visas of a specified class. The prescribed classes of visas are set out in Sch 1 to the Regulations and include a Temporary Partner Visa and a Residence Partner Visa, which is a permanent visa. Schedule 2 to the Regulations sets out the prescribed criteria relating to the relevant class of visa, including the primary criteria and any secondary criteria. If the Minister is satisfied that the criteria prescribed by the Act or the

Regulations have been satisfied, section 65 of the Act provides that the Minister is to grant the visa, or, if not so satisfied, to refuse to grant the visa.

8. There is a two-stage process before a permanent partner visa is granted, with the applicant applying for the provisional or temporary visa and permanent visas at the same time. If the criteria for the temporary visa are met, the visa is granted to allow the applicant to remain in Australia until a decision on the permanent visa is made, which will not be considered until after two years.
9. Part 801 of Schedule 2 to the Regulations prescribes the criteria for a Residence Partner Visa. Clause 801.22 sets out the primary criteria that must be satisfied at the time of the decision.
10. Subclause 801.221(2) provides that an applicant will meet the requirements for the subclause if the applicant is the holder of a Temporary Partner visa, continues to be sponsored by the sponsoring partner, is the "spouse" of the sponsoring partner and at least two years have passed since the application was made.
11. As observed by the Full Court in *He v MIBP*¹, the "central criterion" for both a Temporary Partner Visa and a Residence Partner visa is that the visa applicant must be the "spouse" of the sponsor. Section 5F of the Act defines the word "spouse" as follows:

5F Spouse

- (1) For the purposes of this Act, a person is the *spouse* of another person if, under subsection (2), the 2 persons are in a *married relationship*.
- (2) For the purposes of subsection (1), persons are in a *married relationship* if:
 - (a) they are married to each other under a marriage that is valid for the purposes of this Act; and
 - (b) they have a mutual commitment to a shared life as husband and wife to the exclusion of all others; and
 - (c) the relationship between them is genuine and continuing; and
 - (d) they:
 - (i) live together; or
 - (ii) do not live separately and apart on a permanent basis.
- (3) The regulations may make provision in relation to the determination of whether one or more of the conditions in paragraphs (2)(a), (b), (c) and (d) exist. The regulations may make different provision in relation to the determination for different purposes whether one or more of those conditions exist.

12. Relevantly, r. 1.15A of the Regulations provides as follows:

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:

¹[2017] FCAFC 206 at [28].

- (a) a Partner (Migrant) (Class BC) visa; or
- (b) a Partner (Provisional) (Class UF) visa; or
- (c) a Partner (Residence) (Class BS) visa; or
- (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in sub regulation (3).

(3) The matters for sub regulation (2) are:

- (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
- (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
- (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
- (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.

13. According to the Full Court in *He v MIBP*, r. 1.15A is prescriptive and the Tribunal must give "proper, genuine and realistic consideration" to each of the prescribed circumstances, which comprise four principal matters and thereafter set out a series of specific matters relevant to the principal matters. The Full Court found that the Tribunal is required to make findings on each of the prescribed matters, even if the Tribunal's answer may be that there is no material, or insufficient material, to form a conclusion on a prescribed matter. This not only includes the specific matters numbered with Roman numerals but requires findings in respect of the principal matters under the broad headings.²

BACKGROUND

14. The issue in the present case is whether that Mr Le is in a "married relationship" with his sponsor, Ms Nguyen.
15. In support of his application, Mr Le provided to the Department a written submission from his previous representative dated 11 October 2017, statutory declarations from him and Ms Nguyen dated 4 June 2015 and 8 April 2017, statements in support from Ms Nhan Le, Kim Thien and Thi Hong Tran, copies of bank statements in Ms Nguyen's name for the period October 2013 to March 2014, bank statements for a joint account for the period October

²*He v MIBP* at [73] to [77].

2013 to March 2014, October 2014 to May 2015, November 2016 to October 2017, an infringement notice and a furniture invoice addressed to Mr Le and Ms Nguyen.

16. Prior to the hearing, Mr Le provided to the Tribunal (through his representative) statutory declarations from Nhan Le, Sandra Le and Phu Tho Pham and letters of support from a neighbour, Sezer Kepenci, and a mutual friend, Nguyen Ngoc Lan. The Tribunal was also provided with car insurance and registration documents, telephone and water bills for accounts held in the names of Mr Le and Ms Nguyen, miscellaneous accounts, photographs from the Facebook accounts of Mr Le and Ms Nguyen, other photographs of Mr Le's backyard and Mr Le's trip to Vietnam with Ms Nguyen in February 2019 and bank statements for Ms Nguyen, their joint bank account and Mr Le's account.
17. Ms Nguyen arrived in Australia in 1992. She became an Australian citizen in 1995. Ms Nguyen has three daughters. Her oldest daughter lives in Vietnam and her two younger daughters, who are both married and reside in Australia, are in their late 30s. They both own property in Victoria and it is claimed that Ms Nguyen and Mr Le have lived in various of these properties in the period that they have been in a relationship.
18. Mr Le has an adult son who resides in Vietnam. Both Mr Le and Ms Nguyen have been previously married.
19. Ms Nguyen retired from work in about 2004 and has been on a disability support pension since this time. Mr Le was married in Vietnam to the mother of his son but separated and subsequently divorced prior to meeting Ms Nguyen. Mr Le does not have formal qualifications and worked in various unskilled jobs, including as a handyman, when he lived in Vietnam. He does not own property in Vietnam.
20. Mr Le and Ms Nguyen claim to have met on the Internet on a social networking platform on Yahoo in November 2011. It is claimed that they communicated through this networking site for several months, during which they formed a close, albeit remote online, relationship. According to Ms Nguyen and Mr Le, they found they had a lot in common and in March 2012, Ms Nguyen decided to travel to Vietnam to meet with Mr Le to see whether they should advance their relationship. She travelled to Vietnam to meet with Mr Le staying in a nearby hotel, where it is claimed that they met with each other every day and met each other's family. Ms Nguyen met Mr Le's son and Mr Le met Ms Nguyen's immediate family who were living in Vietnam. According to the information provided to the Department with the application, Mr Le and Ms Nguyen decided they would like to be together, so they became engaged before Ms Nguyen left Vietnam. Ms Nguyen again travelled to Vietnam in June 2012 and on 29 October 2012, Mr Le applied for a subclass 300 prospective marriage visa. This visa was granted on 17 May 2013 and Mr Le arrived in Australia on 28 May 2013. He and Ms Nguyen married on 3 June 2013, which is evidenced by a marriage certificate provided by Mr Le in support of his application. Mr Le applied for a subclass 820 partner visa on 28 June 2013 and this visa was granted on 2 July 2013.
21. On 29 May 2017, Mr Le and Ms Nguyen attended an interview with an officer of the Department. The Tribunal was not provided with an audio file of the interview but there were handwritten notes of the interview on file. The delegate summarised in the decision record a number of the matters said to have been discussed during the interview. One of the issues referred to by the delegate in the decision record is inconsistent statements that were said to have been made by Mr Le and Ms Nguyen about where they lived. This was the subject of questioning at the hearing and the evidence about these matters is referred to in more detail later in this decision.
22. On 13 December 2017 a delegate of the Minister refused to grant the visa and Mr Le applied for a review of the decision to this Tribunal.

ISSUES IN DISPUTE

23. Relevant to this matter, cl.801.221(2)(c) requires that at the time of this decision, the applicant is the spouse of the “sponsoring partner”, who must be an Australian citizen or Australian permanent resident or an eligible New Zealand citizen who was specified in the related Subclass 820 visa application as the spouse or de facto partner of the applicant. In the present case Mr Le claims to be the spouse of Ms Nguyen who is an Australian citizen and was identified in the Subclass 820 visa application. On the evidence before me, the I am satisfied that Ms Nguyen is the “sponsoring partner” of Mr Le.
24. Subclauses 801.221(2)(d) requires, subject to limited exceptions, at least two years have passed since the application was lodged. This is not in dispute.
25. Subclause 801.221(2)(c) requires that the applicant is a spouse or de facto partner of the sponsoring partner.
26. As noted, section 5F provides that a person is the spouse of another where the two persons are in a “married relationship”. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis. In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship, which includes evidence of the financial and social aspects and the nature of the visa applicant’s and sponsor’s household and their commitment to each other.
27. While it is not evident that there was an issue about whether Mr Le and Ms Nguyen were validly married, it is clear from the delegate’s findings that she was not satisfied that Mr Le was in a genuine and continuing relationship with Ms Nguyen and was therefore not satisfied that Mr Le was a spouse or de facto partner of Ms Nguyen for the purposes of the Act.
28. Mr Le provided a Certificate of Marriage dated 3 June 2013 evidencing the marriage between he and Ms Nguyen on that day. Accordingly, on the available evidence I am satisfied that the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).
29. As such, the issue in this case is whether I am satisfied that Mr Le and Ms Nguyen otherwise meet the requirements for being in a married relationship, namely, do they have a mutual commitment to a shared life as husband and wife to the exclusion of all others, is the relationship between them genuine and continuing and do they live together or not live separately and apart on a permanent basis?

CONSIDERATION OF CLAIMS AND EVIDENCE

30. In considering whether I am satisfied that Mr Le and Ms Nguyen are in a married relationship, I must consider each of the matters referred to in r. 1.15A. The evidence relevant to the consideration of those matters and my findings are set out below.

Outline of the evidence

31. At the hearing, Mr Le gave evidence about his background in Vietnam, his previous relationships, the circumstances of meeting with Ms Nguyen and how they came to be engaged and then married, details of their living arrangements and financial affairs and the social activities undertaken by them. Mr Le gave a detailed account of their financial affairs, regular activities and arrangements. He was a credible witness. Ms Nguyen gave evidence

about their finances, the circumstances leading to their engagement and marriage and their day-to-day activities and the social aspects of their lives. The evidence of Mr Le and Ms Nguyen was consistent in relation to these matters.

32. Ms Nguyen's daughters also attended the hearing in person and gave evidence. Both confirmed that Mr Le and Ms Nguyen had been living together as a couple since 2013, they attended family gatherings together and had a "normal relationship" where they cooked gardened and shopped together. They went fishing together and usually stay away for a couple of days. From time to time they would look after the grandchildren. Mr Le and Ms Nguyen lived in various properties owned by Ms Nguyen's daughters and they were currently residing in a property owned jointly by both Ms Nguyen's daughters in Meadow Heights. According to Nhan Le she had observed them sharing household tasks and they usually went shopping together. She said that they were like any couple, they had their "ups and downs". Both daughters urged the Tribunal to accept that their mother and Mr Le were in a spousal relationship. Nhan Le said that her mother was older, and she wanted and needed companionship. Mr Le looked after Ms Nguyen and both daughters said that they were convinced that Mr Le and Ms Nguyen loved each other. I accept their evidence, which was consistent, spontaneous and genuine.
33. One of Mr Le's friends for many years who he knew before coming to Australia, Mr Phu Tho Pham, provided a statutory declaration in support of the application and attended the Tribunal to give evidence. According to Mr Pham, he first met Mr Le many years before Mr Le came to Australia when he went to Vietnam to stay with friends and travel. Mr Le became his guide in Vietnam and they have been friends ever since. In his statutory declaration, Mr Pham stated that he was "100% certain" that the marriage between Mr Le and Ms Nguyen was genuine and continuing and that he "had no reason to doubt this". He had visited them in their old house in Sunshine and in their new home in Meadow Heights on a number of occasions. He stated that he had regular contact with Mr Le since he arrived in Australia and he had observed them living together as a couple. In December 2017, Mr Pham assisted Mr Le in starting his own business and thereafter assisted him in obtaining work as a handyman through his networks in the Vietnamese community. He also assisted Mr Le set up a separate bank account with Westpac bank for his business and initially used his home address for the bank statements. Mr Pham said that the first time that he found out about the relationship between Ms Nguyen and Mr Le was when Mr Le came to Australia. He was one of the witnesses to their marriage in 2013. Mr Pham says that he has visited Mr Le and Ms Nguyen in their home on many occasions, generally either once a week or once every fortnight. Every time he visits Mr Le he is at home with Ms Nguyen. According to Mr Pham, Mr Le and Ms Nguyen are clearly a couple and have been so ever since he has known them to be in a relationship since 2013. He is aware that they enjoy cooking and gardening together and that they frequently go away on fishing weekends. I accept Mr Pham's evidence. He was a genuine and credible witness.
34. Prior to the hearing, Mr Le provided a short statement from Mr Nguyen Ngoc Lan who stated that he had known Mr Le and Ms Nguyen since 2015. He stated that he would often see them on weekends for fishing trips and further stated that if the Tribunal required any further information, he would be able to be contacted on a telephone number specified. I did not contact Mr Lan because I accepted the statement that he had made about the fishing trips, which was consistent with the evidence given by Mr Le and the other witnesses.
35. Mr Le also provided a short statement from his neighbour Mr Sezer Kepenci who stated that he was a neighbour of Mr Le and Ms Nguyen in their [redacted], Meadow Heights property. He stated that he had known Ms Nguyen for the past 10 years and that, to the best of his knowledge, Ms Nguyen and Mr Le had been married since 2013 and had lived in the same household. He also indicated he was prepared to be contacted. I did not contact Mr Kepenci

because I accepted the evidence that he gave in his statement, which was consistent with the evidence given by Mr Le and the other witnesses.

36. Mr Le provided considerable documentation to support his claims. The documents, including copies of photographs, are referred to in more detail in the analysis that follows.

Financial aspects of the relationship

37. Mr Le and Ms Nguyen provided their bank statements, both joint and individual, together with various bills and miscellaneous accounts. They do not own any assets jointly. Neither own real estate and both own their own cars separately. They have mobile phones and the accounts for their phones are on one account in the name of Ms Nguyen. They do not appear to have joint liabilities, although both stated during the hearing that they shared expenses.
38. Ms Nguyen provided her bank statements for an account she held with the Commonwealth Bank of Australia (CBA) in the period January 2012 to May 2015 when this account was closed. The bank statements provided commenced at bank statement no. 75, so it is apparent that Ms Nguyen maintained this account for a number of years prior to 2012. This account showed that Ms Nguyen received a lump sum payment of over \$13,000 in January 2012 and that she withdrew all of this in cash about a month later. According to Ms Nguyen, this was her superannuation that she says she was able to access on her early retirement through her illness. She said that she used the money to travel and stay in Vietnam for a month when she decided to meet Mr Le in person in February 2012. Thereafter the bank statements for this account show that Ms Nguyen's disability support pension was paid into this account every fortnight and that she withdrew most of the pension in cash within a few days. Ms Nguyen says that this was to pay for all expenses that she had. She did not have a credit card and did not use any other debit cards. She said that she preferred to pay cash for everything. Ms Nguyen's daughter, Sandra Le, confirmed that this was consistent with her observation of her mother's practice and that this seemed to be a cultural issue for older Asian women. Ms Nguyen said that this account was closed in May 2015 because by this time she and Mr Le had a joint account. She said there was no longer a need for a separate account and after this time, her disability support pension was paid into the joint account.
39. Mr Le provided copies of bank statements for a joint account with the CBA apparently operated by him and Ms Nguyen, which was opened on 20 June 2013 with a deposit of \$500. In the period June 2013 to June 2015, most deposits into and withdrawals out of the account were in cash. From June 2015, Ms Nguyen's pension was paid into this account and similar amounts were subsequently withdrawn in cash. There were few direct debits or payments to third parties. This pattern was consistent until December 2020, with two exceptions. In April 2020, \$5,000 was deposited into the account from AAI and just under a week later \$6,000 was withdrawn in cash. According to Mr Le, this related to a car accident that damaged Ms Nguyen's car and the money withdrawn was paid to panel beaters to fix the car. The second exception is a deposit in December 2020 of \$14,500 from AAI and a transfer to another bank of \$15,000 a few days later. Mr Le said that the amount paid by AAI was from an accident where his work van was damaged. He subsequently transferred the money to Sandra Le's account so she could help him buy another car.
40. Mr Le provided copies of his bank statements relating to an account in his name with Westpac. This account was opened in December 2017. There were a few deposits into the account until about June 2018. According to Mr Le, this account was used for his business. It shows deposits of just over \$7,000 for the period June to September 2018 with annotations recorded against the deposits consistent with handyman work, such as \$1,500 for "renos" and \$600 for "cleaning". Most debits in this period were cash withdrawals. There were few

deposits into the account in the period December 2018 to date. Mr Le said this was because he found regular work difficult to obtain during 2019 and 2020.

41. In his evidence at the hearing, Mr Le said that he paid cash to Ms Nguyen from his earnings from time to time when he could, but he did not earn much money. After the hearing, Mr Le provided a highlighted version of his bank statements which he submitted showed withdrawals made from his account that he deposited into the joint account or gave to Ms Nguyen of approximately \$7,000 from March 2018 to March 2021. Most of the withdrawals were made during 2018 when there were regular deposits being made into this account. This evidence is consistent with the oral evidence given by Mr Le during the hearing.
42. Mr Le provided his income tax returns for each of the financial years ended 30 June 2018, 30 June 2019 and 30 June 2020. Mr Le's taxable income for 2017-18 and 2019-20 was under \$7,000. His taxable income for 2018-19 was approximately \$24,000. The bank account for the business did not reflect deposits to this extent but presumably this is because Mr Le, like Ms Nguyen, was more accustomed to paying cash for accounts and everyday expenditure. Relevantly, there are few direct debits to third parties from this account. Mr Le nonetheless appears to have disclosed his income to the ATO and Ms Nguyen is recorded as his "spouse" on all returns. The main business address is recorded as [redacted], Sunshine. The residential address recorded on the tax returns is the [redacted], Meadow Heights address.
43. In summary, much of the documentary evidence provided about the financial affairs of Mr Le and Ms Nguyen corroborates their written statements and oral evidence given during the hearing.
44. I find, based on the available evidence, that Mr Le and Ms Nguyen do not own joint assets and do not appear to have joint liabilities but appear to pool their financial resources and share, to the extent possible, day-to-day household expenses. There is no evidence that they owe legal obligations to each other, and it is apparent that they both own their own motor vehicles. Ms Nguyen is the most significant contributor to their finances, and it is apparent from Mr Le's bank statements and his tax returns, that his income is modest. Notwithstanding this, I accept that where possible Mr Le seeks to contribute to the day-to-day expenses and that, where possible, those expenses are shared.
45. Overall, I find that the financial aspects of the relationship between Mr Le and Ms Nguyen are consistent with being in a married relationship.

Nature of the household

46. Mr Le and Ms Nguyen do not have children as a result of their relationship, and both have adult children who are independent. As such, there is no evidence that they have joint responsibility for care and support of children. However, there is evidence that for a period of time Mr Le and Ms Nguyen assisted one of Ms Nguyen's daughters in taking her children to and from school and moved into the daughter's family home in [redacted], Sunshine to assist with this.
47. On balance I am satisfied that there is evidence Mr Le and Ms Nguyen have lived together since Mr Le first came to Australia in 2013. Apparent inconsistencies in details of their residential address was a matter of concern to the delegate. Mr Le explained in statements provided to the Tribunal and during the hearing that when he first came to Australia, he resided in the [redacted] premises in Meadow Heights with Ms Nguyen. This property is owned by both Ms Nguyen's daughters. After this they moved in to the [redacted] property in Meadow Heights to live with Ms Nguyen's youngest daughter, Nhan Le, and they later moved to live in a bungalow at the back of the house of Ms Nguyen's second daughter,

Sandra Le, in [redacted], Sunshine to assist with the children. They moved temporarily to a house in [redacted], Footscray while repairs are being undertaken to the bungalow that they had previously lived in and then they moved back to [redacted], Meadow Heights in 2019, where they have resided ever since. I do not find the fact that Mr Le and Ms Nguyen have moved between four different properties since 2013 to be implausible and inconsistent with being in a spousal relationship. I am satisfied that they moved together as a couple for the reasons they have explained. These various addresses have been listed on their statements, bank statements and other accounts. Relevantly, each of these properties has a connection with Ms Nguyen and her daughters. It is unsurprising that Mr Le and Ms Nguyen have moved between these various properties and it is also possible that at times records with external providers were not updated.

48. Both Ms Nguyen's daughters confirm that Mr Le and Ms Nguyen have resided together as a couple since Mr Le first arrived in Australia. Mr Pham gave evidence that he visits Mr Le and Ms Nguyen on a regular basis and observes that they reside together. He says he has visited them at the Sunshine and Meadow Heights properties. Mr Pham is a credible witness and I accept his evidence. I also accept the evidence of Ms Nguyen's daughters. I accept the evidence of Mr Le and Ms Nguyen that they not only live together as a couple, but they share household work and regularly shop and garden together. I also accept their evidence that they have a keen interest in cooking and often cook together. This was confirmed by Sandra Le in her evidence. These matters are indicative of a married relationship.

Social aspects of the relationship

49. Mr Le provided several photographs of him and Ms Nguyen with members of Ms Nguyen's extended family when they returned to Vietnam in February 2019. According to Ms Nguyen, she returned to Vietnam because her sister was very ill and subsequently passed away. Mr Le accompanied her. Mr Le also provided photographs of him and Ms Nguyen together with friends on fishing trips and in their garden. These various photos appeared to be genuine, unscripted and, importantly, their interest in fishing was corroborated by evidence from Mr Pham, Ms Nguyen's daughters and the statement from Mr Lan. Both Mr Le and Ms Nguyen were able to give a consistent account of the places they go fishing.
50. There is objective evidence that Mr Le and Ms Nguyen present themselves as a married couple to friends, family and acquaintances, such as Mr Pham, their neighbour, Mr Kepenci, Ms Nguyen's daughters and their friend, Mr Lan. Relevantly, Mr Le referred to Ms Nguyen as his "spouse" on his tax returns for each of the financial years 2017-18, 2018-19 and 2019-20. Ms Nguyen is registered as "partnered" for the purposes of her Centrelink benefits. This was confirmed by a letter from Centrelink dated 9 April 2021. In the information provided by Centrelink to the delegate in 2017, which was also provided to the Tribunal and subsequently disclosed to Mr Le with the consent of Ms Nguyen, it is recorded that Ms Nguyen's marital status is "single" with a "qualifier code S24". According to a covering email provided by the Department of Human Services to the Department in response to the request for information, it is noted that the qualifier code of "S24" indicates that the person has a partner but is designated as single for the purposes of their Centrelink payments. Accordingly, this information from Centrelink does not appear to be inconsistent with its later correspondence of 9 April 2021.
51. According to Ms Nguyen's daughters, Mr Le and their mother regularly socialise together and the key activities they undertake together are shopping, cooking, gardening and fishing weekends away. I accept their evidence. Both would be able to observe this because they live near their mother, see her regularly and she has either lived with them or in homes owned by them during her relationship with Mr Le.

52. Concern was raised by the delegate that in the interview in May 2017, Ms Nguyen apparently said the last family gathering Mr Le attended was the memorial for her grandfather in April 2017. In subsequent correspondence, it was stated this was an error as Mr Le had also attended a Mother's Day gathering in May 2017, which included Ms Nguyen, her children and grandchildren and other family members. Photographs of this gathering were attached to the submission in response. The photograph provided showed Mr Le, Ms Nguyen, Ms Nguyen's daughters and several people who were not identified but appeared to be members of an extended family, including grandchildren.
53. It was also recorded in the decision record that at the interview with the delegate Ms Nguyen stated she and Mr Le did not do any activities as a couple. However, this claimed statement is inconsistent with the written statement provided by Ms Nguyen prior to the hearing and her evidence given at the hearing. It is also inconsistent with statements made by third parties about social activities undertaken by Mr Le and Ms Nguyen and a possible explanation for this is that there may have been some misunderstanding of the evidence given by Ms Nguyen.
54. In summary, I am satisfied that the social aspects of the relationship between Mr Le and Ms Nguyen are consistent with them being in a married relationship.

Nature of persons' commitment to each other

55. On the basis of the evidence before me, it appears that Mr Le and Ms Nguyen have been together as a couple from at least June 2013 and that this relationship has endured continuously since this time. I am satisfied that there is evidence they have lived together as a couple over this period and that they have provided companionship and emotional support to each other during this time. Mr Le has assisted Ms Nguyen in looking after her grandchildren, he accompanied her to Vietnam to visit her sick sister in February 2019 and, according to Ms Nguyen's daughters, he provides care to Ms Nguyen who is sometimes unwell. Both Ms Nguyen's daughters gave evidence that they believe Mr Le genuinely loves their mother and Mr Le and Ms Nguyen are in a loving relationship. Ms Nguyen's daughters were particularly concerned that their mother should have the care and companionship that she needs as she gets older which they believe would be provide by Mr Le.
56. Mr Le provided telephone bills for the period from November 2018 to January 2021. Analysis of these accounts show that Mr Le and Ms Nguyen telephone each other on a regular basis with frequent lengthy telephone calls or repeated telephone calls over a short space of time. They do not call each other every day but this is not unusual because their evidence is to the effect that they spend most days together when Mr Le is not working. As such, there would be no need for them to telephone each other during these periods.
57. Mr Le and Ms Nguyen gave evidence that they are in a genuine and continuing relationship and they expect to remain together in their old age. I am satisfied that Mr Le and Ms Nguyen consider their relationship to be continuing and long-term. Mr Le and Ms Nguyen talk about the companionship between them, which is evidenced by the simple but numerous activities that they undertake together.
58. I am therefore satisfied, based on the evidence before me from Mr Le and Ms Nguyen and close friends and relatives, that they have a long-term and genuine commitment to each other, indicative of a married relationship.

Conclusion

59. Having regard to my findings set out above, I am satisfied that Mr Le and Ms Nguyen have a mutual commitment to a shared life as husband and wife to the exclusion of all others. There

is no suggestion that either of them is or has been involved in other relationships from the time that they first met online and Mr Le arrived in Australia to marry Ms Nguyen. I am also satisfied that their relationship is genuine and continuing and, on the evidence before me, I am satisfied that this has been the case since Mr Le first arrived in Australia. I am also satisfied that Mr Le and Ms Nguyen have lived together for this period.

60. Given these findings I am satisfied that the requirements of s.5F(2) of the Act are met at the time of this decision. Therefore, Mr Le meets cl.801.221(2)(c) of the Regulations.
61. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 801 visa.

DECISION

62. The Tribunal remits the application for a Partner (Residence) (Class BS) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 801 (Partner) visa:
 - cls.801.221(2)(c) and (d) of Schedule 2 to the Regulations.

J.L Redfern PSM
Deputy President